

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

VICTOR VOE, by and through his parents and next friends, Vanessa Voe and Vance Voe; *et al.*,

Plaintiffs,
v.

THOMAS MANSFIELD, in his official capacity as Chief Executive Officer of the North Carolina Medical Board; *et al.*,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Intervenor-Defendants.

CASE NO. 1:23-cv-864

INTERVENOR-DEFENDANTS' MOTION TO COMPEL DISCOVERY

Intervenor-Defendants respectfully move the Court, pursuant to Federal Rule 37, for an order to compel Plaintiffs to produce Documents and Communications responsive to Intervenor-Defendants' Requests for Protection ("RFPs") Nos. 1, 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 42, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 64 and answer Intervenors' Interrogatories ("ROGs") Nos. 5 and 6, to include (1) communications and documents shared with or by UNC Health, UNC School of Medicine, or UNC Hospitals (collectively, "UNC") that Plaintiffs are withholding under a claim of privilege or work product protection under the common interest doctrine; and

(2) the materials, including patient medical records, that Dr. Smith consulted or referenced when preparing the two declarations that Dr. Smith has submitted so far in this case.

Undersigned counsel certifies that, after personal consultation and diligent attempts to resolve differences, the parties are unable to reach accord. Intervenors have in good faith met and conferred telephonically with Plaintiffs in an effort to obtain the requested material without court action. The first conference took place on August 7, 2024. The list of participants included Craig Schauer and Clark Hildabrand for Intervenors and Tara Borelli, Omar Gonzalez-Pagan, Abigail Coursolle, and Deepika Ravi for Plaintiffs. The second conference took place on August 13, 2024. The list of participants included Craig Schauer and Clark Hildabrand for Intervenors and Tara Borelli, Catherine McKee, and Anna Fosberg for Plaintiffs. Michael Wood participated on behalf of the Medicaid Defendants.

Relevant for this motion, the result of the conferences was that Plaintiffs refused to provide an unredacted copy of NCVOE00002916 or any other materials created by or shared with UNC that Plaintiffs are withholding under the common interest doctrine. Plaintiffs also refused to provide the materials that Dr. Smith consulted or referenced in preparing Dr. Smith's declarations in this case. Plaintiffs represented that those materials consisted of the medical records of the patients that Dr. Smith described in the declarations.

Intervenors provided notice to the other parties of their intent to file this motion. Plaintiffs oppose the motion.

Dated: August 14, 2024

/s/ Craig D. Schauer

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on August 14, 2024, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

/s/ Craig D. Schauer
Craig D. Schauer
Counsel for Intervenors